

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

14-MD-2543 (JMF)

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

This document relates to all actions

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**COHEN MILSTEIN SELLERS & TOLL'S SUBMISSION IN SUPPORT OF ITS
APPOINTMENT TO PLAINTIFFS' EXECUTIVE COMMITTEE**

BACKGROUND

Pursuant to the July 18, 2014 Order in this Action (the "Order"), the law firm of Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein"), on behalf of plaintiffs in *Villa et al. v. General Motors* (originally filed in the United States District Court for the Eastern District of Pennsylvania), respectfully requests that it be appointed to the Plaintiffs' Executive Committee. In conjunction with this submission, Cohen Milstein also requests that it be afforded a brief opportunity to address the Court at the August 11, 2014 hearing.

ARGUMENT

I. COHEN MILSTEIN IS WELL-QUALIFIED TO SERVE ON THE PLAINTIFFS' EXECUTIVE COMMITTEE

In the Order, the Court noted that it would consider the following criteria, among other things, in appointing counsel to the leadership positions: (1) knowledge and experience in prosecuting complex litigation, including MDLs and class actions; (2) willingness and ability to commit to a time-consuming process; (3) willingness and ability to work cooperatively with others; (4) access to resources to prosecute the litigation in a timely manner; (5) the work counsel has done in identifying, investigating, or prosecuting potential claims in the action; (6) counsel's knowledge of applicable law; and (7) geographic diversity. While many firms that have filed an

action in this Litigation will undoubtedly meet these criteria, Cohen Milstein respectfully asserts that it is especially well qualified to be one of the firms to lead this Litigation.¹

A. Cohen Milstein's Expertise in Complex Civil Litigation

For over 40 years, Cohen Milstein has been one of the nations' leading plaintiffs' class action firms. The firm has litigated some of the nation's most complex class cases and has recovered billions of dollars in damages for injured plaintiffs. In 2012 and 2013, the *National Law Journal* named Cohen Milstein one of the top plaintiffs' firms in the nation and, in 2014, selected Cohen Milstein as one of 20 firms in the United States on its "Midsize Hot List." In October 2013, Law 360 selected Cohen Milstein as one of "the 10 most feared plaintiff firms" in the United States." In 2013, Cohen Milstein and co-counsel firms secured the largest jury verdict in the United States in an antitrust trial against Dow Chemical, resulting in a \$1.1 billion award after trebling.

Cohen Milstein is an 80-lawyer firm based in Washington, D.C., with additional offices in New York, Florida, Pennsylvania, Colorado and Illinois, and has the resources and expertise required to pursue a case of this complexity and magnitude. Indeed, the firm's practice is devoted to prosecuting cases just like this one. The firm also has strong and collegial relationships with the firms appointed as temporary leads by this Court and, for example, is currently serving as co-lead counsel with Hagens Berman in the e-books litigation described below.

Cohen Milstein has served as lead counsel in dozens of antitrust, securities, consumer protection, product liability, civil rights and human rights class actions, including:

¹ While more than qualified to lead this Litigation as one of the three Lead Counsel, Cohen Milstein is satisfied that certain of the firms that are either Temporary Lead and/or have indicated they will seek a Lead Counsel appointment, will do an excellent job in those positions and Cohen Milstein would be pleased to work cooperatively with those firms.

- *In re Urethane Antitrust Litigation*, (D. Kan.): Cohen Milstein is lead counsel on behalf of a class of direct purchasers challenging price fixing by leading manufacturers of polyurethanes. The class secured settlements in the amount of \$139 million from four of the defendants, and took the remaining Defendant, Dow Chemical Company, to trial in early 2013. After a five-week trial, the jury found in favor of the plaintiffs, awarding them over \$400 million in single damages, which automatically was trebled to over \$1 billion. *Keepseagle v. Vilsack*, (D.D.C.): The firm served as lead counsel for a class of Native American farmers in an 11-year case against the United States Department of Agriculture based on discrimination in the federal farm program. The case settled for \$760 million in damages and debt forgiveness. The court described the settlement as “historic” and “groundbreaking,” and observed that it was “probably the best negotiated agreement that this court has seen in its experience” and that the firm “demonstrated the highest level of skills and professionalism.
- *In re Electronic Books Antitrust Litigation*, (S.D.N.Y.): Led by Partner Kit Pierson, Cohen Milstein serves as co-lead counsel for the plaintiff class with Hagens Berman (one of the temporary Lead Counsel in this litigation) in a case that is proceeding in close coordination with 33 State Attorneys General. The litigation challenges a price-fixing conspiracy involving electronic books. Following earlier settlements against the defendant publishers for more than \$95 million, a preliminary settlement against the remaining defendant, Apple, Inc., was recently submitted to the District Court. If the District Court’s action in the related case is affirmed, Apple will pay \$450 million to settle the class and related parens patriae claims. (Apple will not be liable if the District Court’s decision is vacated without a retrial.)
- *In re Plasma-Derivatives Protein Therapies Antitrust Litigation*, (N.D. Ill.): Cohen Milstein is one of two firms serving on the Plaintiffs’ Steering Committee in this litigation, which alleges that the two major producers of protein therapies, along with the industry trade association, conspired to restrict the supply of those therapies to direct purchasers. Due in part to its independent investigation into alleged unlawful conduct in this industry, the Court appointed Cohen Milstein to lead the direct purchaser plaintiffs’ litigation efforts. The direct purchaser plaintiffs recently settled with all defendants for \$128 million.
- *Khoday, et al. v. Symantec Corp. et al.*, (D. Minn.): Cohen Milstein is the lead plaintiffs firm in this consumer class action against the sellers of a redownload service that was unnecessary, as the defendants were providing redownloads of online purchasers for free, and not disclosing it to consumers at the point of purchase. Cohen Milstein obtained the certification of a nationwide class against the defendants. *Khoday, et al. v. Symantec Corp. et al.*, 2014 WL 1281600 (D. Minn. Mar. 13, 2014). The case is currently set for trial in December of 2014. Lead counsel include Andrew Friedman and Douglas McNamara, both of whom will be working on this Litigation.
- *Countrywide MBS Litigation*, (C.D. Cal.): Cohen Milstein served as one of the co-lead counsel in the landmark mortgage-backed securities (MBS) class action litigation against Countrywide Financial Corporation and others. The \$500 million settlement is the nation’s largest MBS-federal securities class action settlement.

Notably, Cohen Milstein attorneys have worked on numerous automobile class actions and auto-related products liability cases, including:

- *Cole v. Ford* (Jasper City, MS): In a case alleging that the driver's Ford Explorer was unsafe due to its propensity to rollover, Cohen Milstein partner Ted Leopold recovered a \$131 million verdict on behalf of the driver's estate. The verdict was the eighth largest jury award in 2010 and the ninth largest U.S. verdict against an auto company in U.S. history. The case settled for a confidential amount just before closing arguments on punitive damages.²
- *In re General Motors Dex-Cool Products Liability Litigation* (Sup. Ct. Cal.): Mr. Friedman was part of the plaintiffs' team in a class action that alleged that Dex-Cool coolant degraded certain vehicles' intake manifold gaskets and other engine sealability components and caused vehicles to overheat. A settlement was reached which covered dozens of GM vehicle platforms spanning ten model years and paid out \$50-\$800 in cash reimbursements to class members who paid for covered repairs.
- *Ford/Firestone Class Action* (S.D. Ill.): Mr. Leopold was on the Plaintiffs' settlement committee in a class action alleging that certain Bridgestone/Firestone tires were defective and were linked to at least 271 U.S. traffic deaths. A nationwide settlement was approved valued at approximately \$149 million.
- *Howard v. Ford Motor Co.* (Cal. Sup. Ct.): The firm served as one of trial counsel in a class action representing car owners alleging a TFI defect. The case was tried to a hung jury verdict and settled immediately before the retrial was scheduled to begin.
- *Brannen v. Ford* (Fla., 4th Ct.): Mr. Leopold secured a \$4 million jury verdict against Ford Motor Corporation, finding that the 2005 Ford F-150 fuel system is defective and that the fuel-fed fire which occurred in an auto accident caused catastrophic injuries to the plaintiff.

B. The Quality and Depth of Cohen Milstein's Litigation Team in this Case Will Serve the Best Interest of the Class

As it does in all cases, Cohen Milstein will staff this litigation with legal professionals consistent with the level of tasks to be undertaken. The following, however, is a brief description of the principal attorneys who have worked and/or will continue to work on this case:

- **Ted Leopold.**³ On February 12, 2014, the Leopold Law Firm merged with Cohen Milstein. Leopold Law had a national practice devoted solely to litigation and trial work. Mr. Leopold

² Cohen Milstein's experience in litigating personal injury/individual auto defect cases also makes it especially suited to the task of, "... coordination with personal injury/wrongful death actions ...". See Order at p. 4.

³ In connection with the ignition switches, Mr. Leopold has already consulted with several experts regarding the overall design and safety of the recalled vehicles at issue.

has tried cases throughout the country and has recovered multi-million dollar verdicts, including jury verdicts in the eight-figure and nine-figure amounts. He has been profiled in “The Best Lawyers In America,” and his work has been featured in the National Law Journal’s Top Cases of the year. He has been nominated for “Trial Lawyer of the Year” by the Public Justice Foundation for his nursing home litigation. He has lectured nationally to Bar and Professional Trial Associations throughout the country on such issues as class action litigation, trial tactics, and consumer justice issues, and he has authored and co-authored several legal publications.

- **Andrew N. Friedman.** Mr. Friedman, a Partner at the firm, joined Cohen Milstein in 1985. He has been a member of the Securities Fraud/Investor Protection practice group and has headed the Consumer Protection & Unsafe Products practice group. In the consumer protection area, Mr. Friedman has been instrumental in securing significant recoveries on behalf of thousands of consumers. He was one of the principal counsel in *Snyder v. Nationwide Mutual Insurance Company* (Sup. Ct., Onondaga Cty., N.Y.), a class action that resulted in a settlement valued at between \$85 million and \$103 million. As one of two co-lead counsel in a class action against Thomson Consumer Electronics, Mr. Friedman reached a court-approved agreement that made up to \$100 million available for persons who paid for unreimbursed repairs to televisions. He was also part of the plaintiffs’ team that secured nationwide benefits for GM vehicle purchasers as the result of defective automobile engine coolants. *In re General Motors Dex-Cool Products Liability Litigation*.
- **Kit Pierson.** Kit Pierson is co-chair of the Antitrust Practice Group at Cohen Milstein. His work has included representation of Fortune 500 corporations, leading national associations, and both corporate and individual plaintiffs in significant antitrust and complex litigation across the United States, including major antitrust class action litigation. His work has included significant representations on behalf of both plaintiffs and defendants. As a shareholder at Heller Ehrman from 1997-2008, Mr. Pierson represented clients such as Microsoft Corporation and 3M Company in major antitrust class action matters. In addition to his work on class actions, Mr. Pierson has litigated many other complex civil litigation matters, including cases raising issues of significant public interest.

II. CONCLUSION

In sum, Cohen Milstein’s track record of aggressively and successfully pursuing large class cases on behalf of consumers and product liability cases related to defective automobiles, coupled with its proven ability to work cooperatively and collegially with other plaintiffs’ firms, warrants its selection as one of the members of Plaintiffs’ Executive Committee in this Action.

Dated: July 28, 2014

Respectfully submitted,

/s/ J. Douglas Richards

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